

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1992 of 1983

Date of decision: 7-1-1997

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

BUNIADI PURUSH ADHYAPAK MANDIR

Versus

TALJIBHAI RABARI

Appearance:

Mr. Udhwani for MR KG VAKHARIA for Petitioners
None present for Respondent No. 1
Mr. Mukesh Patel for Respondent No. 2, 3

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 07/01/97

ORAL JUDGEMENT

The petitioners- Buniadi Purush Adhyapak Mandir, Gundi, and its Principal - prayed for direction to the respondent No.3 - Director, Primary and Adult Education to release the grant deducted as arrears with retrospective effect from 1978. The facts, in brief, of the case are that respondent No.1 was appointed as full time teacher by the petitioners on probation on 12-7-1971 for teaching music, drawing and physical education. Respondent No.1 was later on confirmed. Respondent No.3, for the first time, in the audit report dated 14-12-1981 raised query regarding the salary of respondent No.1 and called for some information and directed petitioners to treat him as part-time teacher. Necessary information as desired by respondent No.3 was furnished by the petitioners vide letters dated 9-8-1982 and 31-8-1982. Further explanation has been given that in the area no teacher is ready to work as part-time teacher and as such respondent No.1 was appointed as full-time teacher and he was allocated necessary workload as required under the rules for full-time teacher. It has also been explained that respondent No.1 was possessing necessary qualification for full-time teacher. However, in compliance of the order of respondent No.3, petitioner converted the services of respondent No.1 into part-time teacher, vide order dated 23rd June, 1982.

2. Being aggrieved by the aforesaid order respondent No.1 made representation to the Gujarat Secondary Education Committee. It is the case of the petitioners that the Gujarat Secondary Education Committee has granted interim relief in favour of respondent No.1 and therefore the petitioners have to pay full salary to him. Respondent No.1 filed special civil application No.4493/82 before this court in which stay has been granted against conversion of his post as part-time teacher. Respondent No.3 made order for recovery of Rs.16,000/- as arrears of salary paid to respondent No.1 as full time teacher, from the grant with retrospective effect from 1978. The writ petition filed by respondent No.1 was decided on 29th December, 1982, and pursuant to the order passed by this Court the matter has been considered by the Director of Primary and Adult Education, Gujarat State, Ahmedabad, on 24th March, 1983. The Director has passed order that respondent No.1 could not have been appointed as full-time teacher in the institution. The salary expenditure of respondent No.1 as full-time teacher cannot be admitted from the grant.

3. One of the contentions raised by learned counsel for the petitioner is that respondent No.1 was allowed to continue as full-time teacher firstly under the stay

order granted by the State Government and then the stay order granted by this Court in special civil application No.4497/82 and as such the full salary has to be paid to him. The amount of salary which has been paid by petitioners to respondent No.1 for the period during which he was protected as full-time teacher by the State Government and by this Court are to be reimbursed by the State Government by way of grant. The respondent -Director of Primary and Adult Education, Gujarat State,Ahmedabad - has not considered this aspect of the matter. In case the teacher was allowed to work as full time teacher by the Government and by this Court, then certainly for that period full salary has to be paid and grant is admissible. It is not the case where the petitioners have voluntarily allowed respondent No.1 to work, but under the court's order they had to do it.

4. The petitioners have not brought on record the complete facts, i.e. period during which the stay granted by the State Government and this Court was operating in favour of respondent No.1, and in absence of the same it is not possible for this court to adjudicate the matter finally on merits. The respondents, on the other hand, have also not chosen to file reply to the special civil application. The averments made by the petitioners that respondent No.1 has worked as full-time teacher for a period under the stay order of the State Government and of this Court stand uncontroverted. In view of these facts and circumstances the appropriate course is to remand the matter to the Director of Primary and Adult Education, Gujarat State, Ahmedabad, to consider the period during which respondent No.1 has worked as full-time teacher under the stay order of the Government and/or of this court. It is for petitioner No.1 to establish the fact about the period of stay, and then respondent - Director of Primary and Adult Education - shall consider the case of admissibility of grant for the said period. For rest of the period, i.e. during which stay did not remain in favour of respondent No.1, no interference is called for. The petition stands disposed of accordingly. Rule made absolute in the aforesaid terms. No order as to costs.

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